

FINDING OF EMERGENCY

These regulations are being implemented on an emergency basis for the immediate preservation of the public peace, health and safety or general welfare within the meaning of Government Code section 11346.1. Further, Government Code section 11346.1(a)(2) requires that, at least five working days prior to submission of the proposed emergency action to the Office of Administrative Law, the adopting agency provide a notice of the proposed emergency action to every person who has filed a request for notice of regulatory action with the agency. After submission of the proposed emergency to the Office of Administrative Law, the Office of Administrative Law shall allow interested persons five calendar days to submit comments on the proposed emergency regulations as set forth in Government Code section 11349.6. To determine the Office of Administrative Law five day comment period check <http://www.oal.ca.gov/> often.

DESCRIPTION OF SPECIFIC FACTS WHICH CONSTITUTE THE EMERGENCY

1. The Legislature enacted the Child Welfare Services: realignment provisions of Senate Bill (SB) 1013 (Chapter 35, Statutes of 2012) on June 27, 2012 to be effective July 1, 2012. Section 92 of SB 1013 repealed Welfare and Institution Code (WIC) section 11463, which governs Foster Family Agency (FFA) rates. Section 93 of SB 1013 added back WIC section 11463 to reflect increases in the basic care and supervision rates paid to foster families certified by FFAs and an annual cost-of-living adjustment to those rates, to bring them into parity with basic rates paid to licensed foster family homes (which were recently increased as a result of litigation). Section 93 of SB 1013 further specifies that these changes shall not change the remaining components of the FFA rate. As a result, the current regulations are obsolete and new and amended regulations are necessary to ensure immediate implementation on a consistent and state-wide basis in order for the immediate preservation of the public peace, health and safety, or general welfare.
2. Delay in the implementation of these regulations would conflict with the statutory directive found in SB 1013, Section 93 that emergency regulations be adopted:

(p)(1) Notwithstanding the rulemaking provisions of the Administrative Procedure Act (Chapter 3.5 (commencing with Section 11340) of Part 1 of Division 3 of Title 2 of the Government Code), the department may implement, interpret, or make specific the changes to this section made by the act that added this section, and amend and repeal regulations and orders subject to this section and adopted by the department by means of all-county letters or similar instructions from the department until regulations are adopted. The department shall adopt emergency regulations no later than July 1, 2014. The department may readopt any emergency regulation authorized by this section that is the same as, or substantially equivalent to, an emergency regulation previously adopted under this section.

(2) The initial adoption of emergency regulations pursuant to this section and one readoption of emergency regulations shall be deemed an emergency and necessary for the immediate preservation of the public peace, health, safety, or general welfare. Initial emergency regulations and the one readoption of emergency regulations authorized by this section shall be exempt from review by the Office of Administrative Law. The initial

emergency regulations and the one readoption of emergency regulations authorized by this section shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days, by which time final regulations may be adopted.

3. Therefore, in order to preserve the public peace, health, safety and general welfare of the State of California, these regulations are to be adopted on an emergency basis.

INFORMATIVE DIGEST

County placement agencies use licensed private FFAs for the placement of children who require more intensive care as an alternative to group homes. By statute, FFAs are organized and operated on a non-profit basis.

Section 92 of SB 1013 repealed WIC section 11463 and Section 93 of SB 1013 added back in WIC section 11463 with substantive changes to the FFA rate. This legislation changed the rate-setting system to reflect increases in the basic care and supervision rates paid to foster families certified by FFAs and an annual cost-of-living adjustment to those rates, to bring them into parity with basic rates paid to licensed foster family homes (which were recently increased as a result of litigation). Section 93 of SB 1013 further specifies that these changes shall not change the remaining components of the FFA rate.

The provisions in this package will also rely on the department, counties and foster care providers to implement and maintain the rate-setting system for FFAs. Beginning in the 2011-12 fiscal year and for each fiscal year thereafter, an annual cost of living increase based on the California Necessities Index (CNI) shall occur, eliminating the prior rate ceiling. The rate amounts will no longer appear in regulation but in an All County Letter (ACL) issued every fiscal year.

In addition the department shall specify the purposes, types, and services of FFAs, including the use of those agencies for the provision of emergency shelter care. Now, a clear distinction is made FFAs that provide treatment of children in foster families and those that provide non-treatment services.

This regulation package also contains numerous grammatical, clerical and changes for clarity of the FFA rate system as well as elimination of obsolete language originally established by the department and/or created by the new legislation.

The regulatory action will benefit children who are placed in FFAs because they require more intensive care. By clarifying the new rate-setting methodology effective as of July1, 2012, the certified homes that serve these children will be ensured the same financial resources as currently paid to children in foster family homes.

The department considered other possible related regulations in this area, and found that these proposed regulations are necessary to be consistent with state statute for statewide administration of the Aid to Families with Dependent Children-Foster Care program and the intent of the legislature in adopting SB 1013.

COST ESTIMATE

1. Costs or Savings to State Agencies: The funding to reflect the updated Foster Family Agency Rate was previously included in the May Revision under the Foster Care Basic premise, which has been realigned.
2. Costs to Local Agencies or School Districts Which Must Be Reimbursed in Accordance With Government Code Sections 17500 - 17630: None
3. Nondiscretionary Costs or Savings to Local Agencies: The funding to reflect the updated Foster Family Agency Rate was previously included in the May Revision under the Foster Care Basic premise, which has been realigned.
4. Federal Funding to State Agencies: The funding to reflect the updated Foster Family Agency Rate was previously included in the May Revision under the Foster Care Basic premise, which has been realigned.

LOCAL MANDATE STATEMENT

These regulations do impose a mandate upon local agencies, but not on school districts. There are no "state-mandated local costs" in these regulations which require state reimbursement under Section 17500 et seq. of the Government Code.

AUTHORITY AND REFERENCE CITATIONS

The CDSS adopts these regulations under the authority granted in sections 10553, 10554 and 11463(1)(2) of the Welfare and Institutions Code. Subject regulations implement and make specific section 11463, Welfare and Institutions Code as adopted by SB 1013 (Chapter 35, Statutes of 2012).